

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

BRUCE E. SMITH,

Petitioner,

v.

RON HAYNES,

Respondent.

CASE NO. C16-5421BHS-KLS

ORDER ADOPTING REPORT  
AND RECOMMENDATION

This matter comes before the Court on the Report and Recommendation (“R&R”) of the Honorable Karen L. Strombom, United States Magistrate Judge (Dkt. 13), and Petitioner Bruce Smith’s (“Smith”) motion to withdraw habeas petition (Dkt. 16).

On September 13, 2016, Judge Strombom issued the R&R recommending that the Court dismiss Smith’s petition as time-barred. Dkt. 13. On October 24, 2016, Smith filed a motion to withdraw his petition. Dkt. 16.

In this case, Smith has failed to timely withdraw his petition. Smith should have withdrawn his petition before the Government was required to answer. *See* Rule 12, Rules Governing § 2254 Cases (“The Federal Rules of Civil Procedure, to the extent that they are not inconsistent with any statutory provisions or these rules, may be applied to a

1 proceeding under these rules.”); Fed. R. Civ. P. 41(a)(1) (rule governing voluntary  
2 dismissal). Accordingly, the Court denies Smith’s motion to withdraw his claim.

3 Regarding the R&R, the Court having considered the R&R and the remaining  
4 record, and no objections having been filed, does hereby find and order as follows:

- 5 (1) Smith’s motion is **DENIED**;
- 6 (2) The R&R is **ADOPTED**;
- 7 (3) Smith’s petition is **DENIED with prejudice** as time-barred;
- 8 (4) A Certificate of Appealability is **DENIED**; and
- 9 (5) The Clerk shall close this case.

10 Dated this 1st day of December, 2016.

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13 BENJAMIN H. SETTLE  
14 United States District Judge  
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